

Cases on Evidence
(1988-89 Edition)

Volume 2

Selected by Alan W. Mewett

These materials are intended for use in the Evidence Course of Professor Mewett in the Faculty of Law of the University of Toronto

SEP 2 2 1988

elected of the o

FACULTY OF LAW LIBRARY UNIVERSITY OF TORONTO

Cases on Evidence (1988-89 Edition)

Volume 2

Selected by Alan W. Mewett

These materials are intended for use in the Evidence Course of Professor Mewett in the Faculty of Law of the University of Toronto Digitized by the Internet Archive in 2018 with funding from University of Toronto

CONTENTS TABLE 0 F

	Stat	utes	Page
		ter of Rights	1
		da Evidence Act	2
	EVIO	ence Act of Ontario	10
1.	Intr	oduction	
	Data	TV 15 A C Sock [1065] S C D 465	24
		ry v. A.G. Sask., [1965] S.C.R. 465 o (1976), 27 C.C.C.(2d) 318	28
		ajohn (1980), 14 C.R.(3d) 243	29
		s (1983), 2 C.C.C.(3d) 339	33
		is (1984), 36 C.R.(3d) 1	41
2.	Comp	etence, Compellability and Oaths	
	Goss	elin (1907), 7 C.C.C. 139	5 Ò
		nnell and Beer, [1968] S.C.R. 802	53
		au, [1977] 2 S.C.R. 277	57
		yn v. M.P.C., [1978] 2 W.L.R. 695	58
		es (1967), 50 C.R. 353	59
		ars (1980), 12 C.R.(3d) 202	61
		ps (1980), 12 C.R.(3d) 193	63 67
		mara (1980), 12 C.R.(3d) 210 ichle (1980), 12 C.R.(3d) 207	70
		a (1975), 31 C.R.N.S. 293	72
		ughlin (1974), 24 C.R.N.S. 362	73
		h (1979), 45 C.C.C.(2d) 199	77
	Gune	wardene, [1951] 2 K.B. 600	81
		ey v. M.P.C., [1965] A.C. 595	83
		e (1975), 29 C.R.N.S. 1	87
		ey (1927), 48 C.C.C. 97	92
		n (1981),58 C.C.C.(2d) 352 (Ont.C.A.) all, [1962] S.C.R. 469	94 96
	Kena	all, [1902] 3.C.R. 409	30
3.	Refr	eshing Memory	
			0.0
		roy and Rouse (1977), 5 C.R.(3d) 125	9 [.] 8 101
		y (1969), 6 C.R.N.S. 288	104
	beng	ert (1980), 15 C.R.(3d) 21; 15 C.R.(3d) 114 at 160	
4.	Cred	ibility	
	(-)	Format Ford Language	
	(a)	Expert Evidence	106
		Wilband, [1967] 2 C.C.C. 6 Rosik (1971), 13 C.R.N.S. 129	108
		Abbey (1982), 43 N.R. 30	116
		Phillion (1977), 37 C.R.N.S. 361	122
		Béland (1988), 60 C.R. (3d) 1 (S.C.C.)	
		(1300), 00 0.11. (30) 1 (3.0.01)	126
	(b)	Enhancing Credibility	
		Clark (1984), 40 C.R.(3d) 183	142
		Kyselka, [1962] O.W.N. 164	148
		Corke v. Corke, [1958] 1 All E.R. 224	149
		Welstead v. Brown, [1952] 1 S.C.R. 3	151 153
		Pappin (1970), 12 C.R.N.S. 287 (Ont.C.A.).	153
		Rozich (1980), 10 C.R.(3d) 364 Giraldi (1975), 28 C.C.C.(2d) 248	157
		Panglinan (1988), 60 C.R. (3d) 188.	160
	(c)	Complaints in Sexual Cases	1.62
		Sexual Offences Act	162
		Timm (1981), 59 C.C.C.(2d) 396 (S.C.C.)	162 165
		Page (1984), 40 C.R.(3d) 85	102
	(d)	Prior Inconsistent Statements	
		Deacon (1947), S.C.R. 531	170
		McInroy and Rouse, [1979] 1 S.C.R. 588	171
		Wawanesa v. Hanes, [1961] O.R. 495	176
		Milgaard (1971), 14 C.R.N.S. 34 Cronshaw (1977), 7 C.C.C. (2d), 183 (Prov. Ct.)	179
		Cronshaw (1977), 3 C.C.C.(2d) 183 (Prov.Ct.)	183

183

	Credibility (contd)		Page	
	(e)	Prior Convictions Criminal Code s.593 D'Aoust (1902), 5 C.C.C. 407 Koufis (1941), S.C.R. 481 Titchner, [1961] O.R. 606 St. Pierre (1974), 17.C.C.C.(2d) 489 Morris (1979), 43 C.C.C.(2d) 129	184 184 185 186 188 190	
	(f)	Prior Sexual Conduct Criminal Code ss. 246.6, 246.7 Laliberte, [1877] 1 S.C.R. 117 Forsythe (1980), 15 C.R. (3d) 219	201 202 204	
	(g)	Accused Attacking own Credibility French (1978), 37 C.C.C.(2d) 201 Helpard (1979), 10 C.R.(3d) 76 Dietrich (1970), 11 C.R.N.S. 129 R. v. K. (1979), 47 C.C.C.(2d) 436	209 214 216 221	
5.	Char	racter		
	Guay Tayl Glyr Lupi Lowe McMi	amara (1981) 56 C.C.C.(2d) 193 (1978),42 C.C.C.(2d) 536 or (1982),35 O.R.(2d) 738 (Ont.C.A.) on (1971),15 C.R.N.S. 343 en (1970),9 C.R. 165 ery,[1973] 3 W.L.R. 235 (11an (1975),29 C.R.N.S. 191 ertson (1975),29 C.R.N.S. 141	226 233 235 237 238 243 248 253	
6.	Simi	lar Fact Evidence		
	Maki Smit Swei Boar Lebl Clou Stra Scop MacD	minal Code Section 312, 314(1)(b), 317, 318 In,[1894] A.C. 57 In (1916),11 Cr. Ap. Rep. 229 Itzer (1982),68 C.C.C.(2d) 193 Idman,[1975] A.C. 421 Idanc (1975),29 C.C.C.(2d) 97 Itier (1980),12 C.R.(3d) 10 Inffen,[1952] 2 Q.B. 911 Idelliti (1982),63 C.C.C.(2d) 481 Idenald v. Canada Kelp (1974),39 D.L.R.(3d) 617 Iman article, (1975),91 L.Q.R. 193	255 256 259 260 264 268 272 278 282 289 294	
7.	Hear	say		
	(i)	General General		
		Myers v. D.P.P., [1965] A.C. 1001 Ares v. Venner, [1970] S.C.R. 608 Subramaniam, [1956] 1 W.L.R. 965 Wright v. Tatham (1837), 112 E.R. 488 Wysochan (1930), 54 C.C.C. 172 Wildman (1984), 14 C.C.C. (3d) 321 Ratten, [1972] A.C. 378	303 308 310 312 315 317 327	
	(ii)	Res Gestae		
		Bedingfield (1879), 14 Cox C.C. 341 Gilbert (1907), 38 S.C.R. 284 Leland, [1951] O.R. 12 Hodd (1970), 1 C.C.C.(3d) 363 Graham (1972), 7 C.C.C.(2d) 93 Newton (1976), 34 C.R.N.S. 161 Risby (1977), 32 C.C.C.(2d) 242 Keeler (1978), 36 C.C.C.(2d) 8 Clark (1983), 35 C.R.(3d) 357	331 333 335 340 344 349 351 352 355	
(iii)	Statements Against Interest		
		Donnelly v. U.S. (1913), 228 U.S. 243	371	

Hea	rsay (contd)	Page
	Agawa (1975), 31 C.R.N.S. 293	373
	Demeter (1977), 35 C.C.C.(2d) 137 O'Brien (1977), 35 C.C.C.(2d) 209	376
	Pelletier (1978), 38 C.C.C.(2d) 515	378
	Lucier (1982), 65 C.C.C.(2d) 150	381 383
(iv)	Prior Proceedings	
	Criminal Code S.S. 643, 541	385
	Walkerton v. Erdman (1894), 23 S.C.R. 352	386
	Hollington v. Hewthorn (1943), 1 K.B. 587	389
	Goody v. Odhams Press, [1967] 1 Q.B. 333 Gushue (1980), 50 C.C.C.(2d) 417	393
		393 398
	Grdic v. R. English v. Richmond, [1956] S.C.R. 383	406
	Re Charlton, [1969] C.C.C.(2d) 1	409
	Humphrys, [1976] 2 All E.R. 497	411
	R. v. Prince	413
	Kienapple (1974), 15 C.C.C.(2d) 524	421
(v)	Bodily and Mental Condition	
	Youlden (1912), 260 L.R. 75	423
	Mutual Life v. Hillmon (1892), 145 U.S. 285	425
	Wainwright (1875), 13 Cox C.C. 171 Thomson, [1912] 3 K.B. 19	427 428
	Home v. Corbeil, [1955] 4 D.L.R. 750	429
(vi)	Business Records	
	Vanlerberghe (1979), 6 C.R.(3d) 222	440
	McMullen (1979), 47 C.C.C.(2d) 499	441
	Civil Evidence Act (U.K.); Computer Evidence (S.Africa) Wood (1983), 76 Cr.App.R. 23	447 448
8. Conf	essions and Pre-Trial Statements	
(i)	<u>General</u>	
	Piché (1971), S.C.R. 23	451
(ii)	Persons in Authority	
	Towler (1968), 5 C.R.N.S. 55	454
	Pettipiece (1972), 18 C.R.N.S. 236	455
	Rothman (1981), 1 S.C.R. 640	459
	Collins (1976), 29 C.C.C.(2d) 304	462 464
	Perras (1973), 11 C.C.C.(2d) 245 Stewart (1980), 54 C.C.C.(2d) 93	466
(iii)	The Voir Dire	
	Thiffault (1933), 60 C.C.C. 97	469
	Kacherowski (1978), 37 C.C.C.(2d) 257	471
	Conkie (1978), 38 C.C.C.(2d) 408	473
	Wert (1980), 12 C.R.(3d) 254	475
(iv)	Need for Voir Dire	
	Sweezey (1974), 27 C.R.N.S. 163	476
	Powell (1976), 33 C.R.N.S. 323	478
	Erven (1979), 6 C.R.(3d) 97	480 491
	Morris (1979), 10 C.R.(3d) 59 Boulet (1977), 34 C.C.C.(2d) 345	491
	Watson (1980), 1 W.L.R. 991	496
	Price (1981) 59 C.C.C.(2d) 367 (Ont.Co.Ct.)	499
	Park (1981), 59 C.C.C.(2d) 385 (S.C.C.)	501
(v)	Timing of the Voir Dire	

Confessions etc. (contd).

9.

Divorce Act, s.9

()	Nolumbaria a	
(V1) .	Voluntariness	F 0.4
	Ibrahim, [1914] A.C. 599	506 509
	Horvath (1979), 44 C.C.C.(2d) 3 85 Prager (1972), 1 All E.R. 1114	517
	Serack (1973), 24 C.R.N.S. 295	519
	Washer (1948), 92 C.C.C. 218 Ward (1979), 7 C.R.(3d) 153	520 521
	Rothman (1981), 35 N.R. 485	504
	Marshall (1960), 127 C.C.C. 76	524 537
g a seminar		
(vii)	Charter Cases	
	Clarkson (1988) 50 C.R. (3d) 289 Manninen (1987) 34 C.C.C. (3d) 385	539 546
		340
(V111)	Truth of Confession	
	Hammond, [1941] 3 All E.R. 318 Hnedish (1958), 26 W.W.R. 685	552 554
	De Clerq, [1968] S.C.R. 902	556
	Wong Kam-Ming, [1979] 2 W.L.R. 81	560
(ix)	Confessions Confirmed by Subsequent Facts	
	St. Lawrence (1949), 93 C.C.C. 376 Wray (1970), 11 C.R.N.S. 235	565 5 68
(x)	Use of Confessions	
	Jackson (1980), 57 C.C.C.(2d) 154	575
	Herodotu (1979), 6 C.R.(3d) 336 Ma, Ho and Lai (1979), 6 C.R.(3d) 325.	580 584
(xi)	Use of Voir Dire evidence at Trial	
	Van Dongen (1975), 31 C.R.N.S. 346	589
	Gauthier (1976), 33 C.R.N.S. 46 Magdish (1978) 41 C.C.C.(2d) 392	591 594
	Brophy (1981), 2 All E.R. 705	595
	Tarrant (1982), 63 C.C.C.(2d) 385	598
(xii)	Adopted Statements and Silence	
	Chapdelaine (1935), 63 C.C.C.5	600
	Fargnoli, [1957] O.R. 140 Govedarov (1974), 16 C.C.C.(2d) 238	601 602
	Eden, [1970] 3 C.C.C.280	603
	Sweeney (1977), 35 C.C.C.(2d) 245	605 608
	Christie, [1914] A.C. 545 Sayegh (No.3) (1982), 69 C.C.C.(2d) 84	610
	Parkes (1977), 64 Cr.App.R. 25	612
	Gottschall (1983), 10 C.C.C.(2d) 447	613
(xiii)	Consciousness of Guilt and Lies	
	Burdick (1975) 27 C.C.C. (2d) 497 Sparrow (1979), 12 C.R. (3d) 158	626 629
(xiv)	Conditional Admissibility	
	Carter (1982), 67 C.C.C. (2d) 568	631
(xv)	Guilty Plea	
	Dietrich (1970) 11 C.R.N.S. 22	635
	Rimmer (1972), 1 All E.R. 604	637
(xvi)	Pentiluk (1975), 28 C.R.N.S. 324 Young Offenders Act.	639 641
(^41)	Today or tonders may	041
\dmissi	ons	

642

Admissions (contd) Yorkton v. Morley (1967), 66 D.L.R.(2d) 37 642 Strand Electric, [1969] 2 C.C.C. 264 644 10. Privilege Slavutych v. Baker (1977), 38 C.R.N.S. 306 646 ~Descoteaux v. Mierzwinski! (1982), 44 N.R. 462 646 Shenton v. Tyler, [1939] Ch. 620 654 Rumping v. D.P.P., [1962] 3 All E.R. 256 656 St. Jean (1976), 34 C.R.N.S. 378 658 Akey (1980), 12 C.R.(3d) 240 660 Jean (1979), 7 C.R.(3d) 333; (1980) 16 C.R.(3d) 193 663 Lloyd (1982), 64 C.C.C.(2d) 169 665 Reference re Legislative Privilege (1978), 39 C.C.C.(2d) 667 671 Health Records (1982), 62 C.C.C.(2d) 193 675 Dubois (1986) 22 C.C.C. (3d) 513 11. State Secrets 684 Duncan v. Cammell, Laird, [1942] A.C. 624 687 Conway v. Rimmer, [1963] A.C. 910 692 Mannix (1982), 126 D.L.R.(3d) 155 695 Re Goguen (1982) 10 C.C.C. (3d) 492 705 Carey v. The Queen (1987), 30 C.C.C. (3d) 498 12. Improperly Obtained Evidence 726 Kuruma, [1955] A.C. 197 729 Sang, [1980] A.C. 402 735 Lawrie v. Muir, [1950] S.L.T. 37 736 Bunning v. Cross (1978), 52 A.L.J.R. 561 739 Criminal Code Sections 178.16, 178.2 741 Stewart (1981), 60 C.C.C.(2d) 407 742 Dass (1979), 47 C.C.C.(2d) 194 746 Goldman (1979), 51 C.C.C.(2d) 1 Hogan (1979), 18 C.C.C.(2d) 65 12a. Charter Cases 752 Hunter v. Southam (1984) 14 C.C.C. (3d) 97 Collins (1987), 56 C.R. (3d) 193 763 773 Therens (1986, 45 C.R. (3d) 97 13. Corroboration Criminal Code Sections 246:4, 586 791 Baskerville, [1916] 2 K.B. 658 793 Ethier, [1959] O.R. 533 796 Hester, [1972] 3 All'E.R. 1056 799 Kilbourne, [1973] 1 All E.R. 440 803 Warkentin (1976), 30 C.C.C.(2d) 1 807 Vetrovec (1982), 67 C.C.C.(2d) 1 14. Real Evidence 817 Yachuk v. Blaise, [1944] O.W.N. 412 818 Draper v. Jacklyn, [1968] 2 O.R. 683 820 Parsons (1977), 40 C.R.N.S. 202 15. Judicial Notice 823 Varcoe v. Lee (1919), 180 Cal. 338 827 Savidant (1945), 19 M.P.R. 448 16. Miscellaneous Problems in the Trial Process 829 Cooper (1977), 34 C.C.C.(2d) 18 835 LeMay, [1952] 1 S.C.R. 232 839 Browne v. Dunn (1893), 6 R. 67 841 Dyck, [1970] 2 C.C.C. 283 842 Mete (1973), 22 C.R.N.S. 387 845 Angelantoni (1975), 31 C.R.N.S. 342 846

Dobberthien (1973), 13 C.C.C.(2d) 513

Sparre (1978), 37 C.C.C.(2d) 495

850

